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REMARKS

Claims 1-4 and 6-14 are now pending in the application. Claim 5 has been canceled and the limitations thereof have been incorporated into amended independent Claim 1. Claim 1 is the only independent claim.

Claims 1-4, 6-11 and 13-14 were rejected under 35 USC 103(a) as being anticipated by US Patent 5,868,735 (Lafontaine) in view of US Patent 6,497,721 (Ginsburg et al.); Claim 5 was rejected under 35 USC 103(a) as being unpatentable over Lafontaine and Ginsburg in view of US Patent 5,964,751 (Amplatz et al.); and Claim 12 was rejected as being unpatentable over Lafontaine and Ginsburg in view of US Patent 6,063,101 (Jacobsen et al.).

In view of the foregoing claim cancellations and amendments, and in view of the following comments, each of the outstanding rejections is respectfully traversed and reconsideration is requested.

Specifically, independent Claim 1 has been amended to recite the limitations of now canceled dependent Claim 5. Claim 1, as amended herein, is directed to a device to treat tissue including an outer tube, an inner tube disposed at least partially within the outer tube and including a guidewire lumen, a supply lumen and a return lumen, and a dual balloon. The dual balloon includes an inner balloon and an outer balloon, the inner balloon coupled to the inner tube at a proximal end and at a distal end, the outer balloon coupled to the inner tube at a distal end and to the outer tube at a proximal end. A first interior volume, defined between the outer balloon and the inner balloon, is in fluid communication with an inlet in the volume between the outer tube and the inner tube, *and at least two radially extending tabs are disposed around a circumference of the inner tube to substantially center the inner tube within the dual balloon.*

The Action takes the position that Lafontaine teaches all of the limitations of the claim except two radially extending tabs – Amplatz et al. disclose a balloon catheter that includes tab members to anchor the inner lumen of the catheter within the balloon while inflated – [t]herefore, it would have been obvious...to include two tab members to anchor the inner lumen within the balloon when inflated”.

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Applicants respectfully disagree and submit that Amplantz fails to teach or suggest a device to treat tissue that includes the use of at least two radially extending tabs that are *disposed around a circumference of the inner tube* to substantially center the inner tube within the dual balloon.

Amplantz is directed to a light delivery system and describes only an 'anchoring structure' that uses a thin, flexible plastic sheet material that "has opposing ends 46-48 bonded to the inside surface of the balloon member 32" (col. 4, lines 30-35). Amplantz "bonds" this rectangular tab of plastic sheet material to the inside surface of the balloon member to prevent "sagging or drooping" that would cause the optical path leading from the light fiber to the vessel wall to be unsymmetrical.

Amplantz does *not* however teach or suggest using at least two tabs, radially extending from the inner tube, to center the tube within a dual balloon. Applicants' tabs are not 'bonded' to the surface of the balloon – but rather 'center the inner tube 122 within the catheter 100' and prevents the flow of working fluid from being 'unduly impeded' (see page 15, lines 4-17 of Applicants' specification as filed).

In addition to the argument presented above, Applicants respectfully submit that it is, of course, improper to pick and choose elements from several references in order to "build" an obviousness rejection, when such a combination would not in fact have been obvious to one of ordinary skill in the art. Further, it is impermissible to use an Applicants' specification as an instruction manual or "road map" to piece together the teachings of the prior art in order to render claims obvious. Amplantz is concerned with "sagging or drooping" in that it would cause the optical path to become unsymmetrical – Applicants use of tabs 119, 219 provide a means of centering the inner tube, and also the advantage in that "contact by the inner tube of the outer tube may be associated with an undesired conductive heat transfer prior to the working fluid reaching the working region, thereby deleteriously increasing the fluid of the working fluid at the working region (see page 21, line 27 – page 22, line 2 of Applicants' specification). Again, Amplantz does not provide any such teaching or suggestion. The *only* suggestion for combining

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the alleged teachings of Lafontaine, Ginsburg and Amplantz in the manner suggested in the Action is found in the luxury of the hindsight accorded one who first viewed Applicants' disclosure, which of course, is not a proper basis for a rejection.

For at least the foregoing reasons, independent Claim 1, as amended herein, is believed to be patentable over any permissible combination of the teachings of Lafontaine, Ginsburg and Amplantz, and reconsideration is requested.

Dependent Claims 2-4 and 6-14 are believed to be clearly patentable for all of the reasons indicated above with respect to Claim 1, and even further distinguish over the cited references by reciting additional limitations.

Since the Applicants have fully responded to the Office Action, it is respectfully submitted that in regard to the above remarks that the pending application is patentable over the art of record and prompt review and issuance is accordingly requested. Should the Examiner be of the view that an interview would expedite consideration of this Amendment or of the application at large, request is made that the Examiner telephone the Applicants' undersigned attorney at (908) 518-7700 in order that any outstanding issues be resolved.

Respectfully submitted,


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